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SUPREME COURT OF THE UNITED STATES
SUMMER TERM, 1979

MOTION FOR LEAVE TO
FILE PETITION

79-5010

ALPHONSE BIFULCO, PETITIONER

AGAINST

UNITED STATES OF AMERICA, RESPONDANT.

~~MOTION FOR LEAVE TO FILE~~ PETITION

FOR WRIT OF CERTIORARI: AND
PETITION FOR WRIT OF HABEAS
CORPUS

ON THE APPEAL:

ROBERT E. WINKLE
PEMBROKE STATION
DANBURY CT. 06810

SUPREME COURT OF THE UNITED STATES

SUMMER TERM

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ALPHONSE BIFULCO,
APPELLANT

VS.

UNITED STATES OF AMERICA,
APPELLEE.

NO. 954 AUGUST TERM, 1979
UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

NOW comes the Appellant, Alphonse Bifulco, in accordance with rules 23 and 53 of the Supreme Court Rules, who deposes and says:

JURISDICTION

Jurisdiction is conferred upon this Honorable Appellate Court prusuant to Rule 19 of The Supreme court rules.

1. On January 14, 1979, Appellant Bifulco filed a Motion to Vacate Sentence in the United States District Court for The Eastern District of New York. On January 23, 1979, the Appellant's Motion was denied by that court. The Appellant timely filed his appeal in the Circuit Court for The Second Circuit, and on May 30, 1979 his appeal was denied by orde of that court. Copies of both opinions are hereto attached for the courts convenience.

2. Jurisdiction is conferred upon this court in accordance with Supreme court Rule 19 (1) (b), Title 28 U.S.C. 1651,2241,2243 and 2255

(a) Petitioner seeks to have the decission of the United States District Court for the Eastern District of New York, issued to the Appellant on January 23, 1979 by the Honorable Judge Costantion for that district, reviewed by this Supreme Court. The Decission of the District Court was upheld by the Second Circuit on May 30, 1979.

(b) No Motion for rehearing was filed withe the circuit court of appeals.

(c) The Statuatory provisions used to confer Jurisdiction on this court are the provisions of Title 28 U.S.C. 1651, 2241, 2243,2255. Also the fact that the sentencing court exceeded its jurisdiction to broaden the Statute of Title 21 U.S.C. 846.

(d) The Statutes involved in this petition are Title 21 U.S.C. 846 and Title 21 U.S.C. 841 (c).

(e) Petitioner was sentenced to Statute 846 concerning conspiracy to commit a substantive offense that is 841. The provisions under 841 (c) speciffically states that a special parole term can only be given to a convicte citizen if that citizen is convicted in violation of Title 21 841 or 845. The Statuatory provisions do not include Section 846 of that Title. Section 846 only carries as punishment for its violation " Fine, Imprisonment or Both".

(f) The questions presented herein are threefole. The first being whether any Doubt or Conflict must be interperted in favor of accused citizen insofar as Statute construction is concerned, and whether the court may arbitrarily broaden the statutes to meet its own ends. The second question for review is whether Strict construction of the statutes is Mandatory under the canons of Construction and mandated by this court. The third question is whether the Appellant is entitled to an opinion on the issues raised by him and whether the Circuit court has put itself in direct conflict with this Appeals Court .

(g) Jurisdiction of the Court of the first instance was conferred pursuant to Title 28 U.S.C. 2255.

(H) Petitioner relies on Rule 19 (1) (b) for his argument, to wit:

> Where a Court of Appeals has decided an important question of federal law which has not been, but should be, settled by

this court; and has decided a federal question in conflict with the applicable decisions of this court.

The circuit court for the Southern District refused to discuss or rule on the claim brought by the appellant in the District Court. The Appellant feels he is entitled to a decission, because of the magnitude of the questions presented for review, and because of the impact the decission would have on thousands of prisoners, and pepple under the jurisdiction of federal parole officers.

The District Court and the Circuit court are in direct Conflict with the holdings of FASULO, PRUSSIAN, McBOYLE ANDSALEN, because the canons of construction demand Strict Construction where statutes are concerned, and the District Court and The Circuit court chose to liberally construe the statute at bar here and therefore, put itself in direct conflict with the decissions of this court.

WHEREFORE: FOR THE FOREGOING reasons, Appellant Bifulco asks this court to docket his petitiion for Certiorari and review this case. This Court has Never review the question presented herein, and has denied all Certiorari petitions presented thusfar. The mere fact that there is a Split among the Districts on this Question thus far, and there are Two cases on appeal in the Third Circuit should prompt this court to take the issue under advisement.

RESPECTFULLY SUBMITTED

Alphonse Bifulco

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